

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**PROFESSIONAL PACKAGING SERVICES, LLC**  
**dba POSTAL CENTER USA**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid vacation time

**Employer:** Professional Packaging Services LLC dba Postal Center USA,  
1 Hardy Rd, Bedford, NH 03110

**Date of Hearing:** August 4, 2015

**Case No.** 50730

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on June 17, 2015. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on July 17, 2015. The claimant is seeking \$325.50 in unpaid vacation time.

The claimant testified that she worked for the employer for over three and a half years. She was an hourly employee and she stated that she always accrued vacation time in the amount of 30 hours per year. The claimant testified that there was no employee handbook or written hiring agreement in place. She said that the leave was accrued by the calendar year and any reduction in hours did not change her accrual total of 30 hours.

The claimant testified that upon separation from employment she was paid 8.30 hours. She believes that she is due another 21.70 hours at the rate of \$15.00 per hour.

The employer, Kristen Beals, testified that she owned a small business and that the claimant was the only full time employee. She stated that the claimant worked for a year (2012) without accruing vacation time.

In 2013 the claimant took a week off in August. The employer took an average of the hours worked from January to August and that was the amount of the paid time off. In May of 2014 the claimant took a week off and the average number of hours worked up to that point was

32 hours. This was the amount the claimant was paid based on the average from January to May.

The employer testified that from May of 2014 until May of 2015 the claimant averaged 23.5 hours of work per week. The claimant had asked for her workweek hours to be reduced from the previous years. The employer testified that the claimant's average work week from January 2015 until May 2015 was 21.5 hours. The employer did send a payment for 8.30 hours to the claimant upon separation. The employer also stated that there is no written handbook in place.

### **FINDINGS OF FACT**

RSA 275:43 I Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:43 V Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law places an issue such as vacation time into the category of wages when the time is due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is valid. The claimant has the burden to show that there are wages due and owing and she met this burden.

It was clear to the Hearing Officer that there is no written policy in the earning of vacation time or the pay out of vacation time. The claimant has a history of work for the employer and a practice of receiving leave after the first year of work. The testimony shows that there was no leave take the first year of employment. In the Year 2013 the claimant was paid for one week of vacation time based on an average number of hours worked. The claimant was paid for an average of 30 hours.

In the Year 2014 the claimant was paid 32 hours for an average time worked from January to May.

In the Year 2015 the testimony shows that the claimant reduced her work week and from January until separation in May, the claimant did not take leave and worked an average of 21.5 hours per week. Upon separation the claimant was paid for 8.3 hours of leave.

Because there is no written policy, the past practice shows that the employer uses work week averages from the start of the year until vacation is taken. In this case the claimant averaged 21.5 hours. The employer did pay for 8.3 hours but again, that does not come under any written policy. The claimant was credible in that she received leave but she did not consistently get 30 hours of leave. One year it was 32 hours. It is also clear that the entire year has to be worked because the past practice was to pay the average when the leave was taken.

Because there is no written policy in place, the claimant rightfully felt that she was to be paid her vacation time. The testimony shows that the average for this year was 21.5 hours. She was paid for 8.3 leaving a balance of 13.2 hours. The Wage Claim is valid in the amount of \$198.00.

### **DECISION AND ORDER**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant proved by a preponderance of the evidence that she was not paid all vacation pay due, it is hereby ruled that the Wage Claim is valid in the amount of \$198.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$198.00, less any applicable taxes, within 20 days of the date of this Order.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: August 25, 2015

TFH/kdc